

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARIA G. RUIZ</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 201,798
<b>NATIONAL BEEF PACKING COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>WAUSAU UNDERWRITERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from a January 28, 1997, Decision entered by Administrative Law Judge Kenneth S. Johnson.

**APPEARANCES**

Claimant appeared by her attorney, C. Albert Herdoiza of Kansas City, Kansas. Respondent and its insurance carrier appeared by their attorney, Kerry McQueen of Liberal, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board considered the record as set forth in the decision by the Administrative Law Judge and adopts the stipulations listed therein.

**ISSUES**

Claimant lists the following as issues to be determined by the Appeals Board upon review:

- (1) Did the Administrative Law Judge fail to order the \$730.20 underpayment of temporary total disability compensation to be paid to claimant by respondent?
- (2) Is claimant entitled to a permanent partial disability award which includes claimant's cervical and bilateral shoulder areas as opposed to her right shoulder only?
- (3) Did the Administrative Law Judge err by awarding a 5 percent permanent partial general body disability?
- (4) Did the Administrative Law Judge err by failing to make provisions for future medical treatment?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the decision of the Administrative Law Judge should be affirmed.

The parties stipulated to all of the necessary elements of this claim, leaving for determination only the nature and extent of claimant's disability. This sole remaining issue was further limited by agreement to a determination of the percentage of functional impairment, the parties having agreed that a work disability was not contemplated or alleged.

The record contains expert medical opinions from three physicians concerning the percentage of claimant's permanent impairment of function. The report of a fourth physician is also included in the record, but a disability rating was not provided therein. The Administrative Law Judge's Decision sets out the diagnosis and impairment ratings given by each of the physicians. His description of their testimonies is accurate and it is not necessary to repeat same herein.

(1) Taking the issues in the order they appear on claimant's Application for Review, the Appeals Board will address first the question concerning the underpayment of temporary total disability compensation (TTD). Claimant argues that the Administrative Law Judge failed to order the payment by respondent of the underpayment of TTD in the amount of \$730.20. Conversely, respondent points out in its brief that the Administrative Law Judge's decision awarded claimant 37 weeks of TTD at the rate of \$231.40 per week for a total of \$8,561.80. When this is compared with the stipulated \$7,831.60 in TTD that

claimant was paid by respondent, it yields an underpayment of \$730.20. Accordingly, claimant's first issue on appeal is without merit because the underpayment of TTD was, in fact, ordered.

(2, 3) The next two issues claimant raised concern the nature and extent of claimant's disability, specifically whether the Administrative Law Judge failed to find that claimant injured her cervical and bilateral shoulder areas as opposed to only her right shoulder.

Claimant assumes the Administrative Law Judge only found permanent disability to claimant's right shoulder because the 5 percent permanent partial disability award corresponds to the 5 percent impairment of functional rating given by C. Reiff Brown, M.D. Dr. Brown's rating was a rating to the body as a whole, but was given on the basis of his diagnosis of right bicep and right rotator cuff tendonitis. Although the Administrative Law Judge did not specifically tie his 5 percent permanent partial general body disability award solely to the opinion of Dr. Brown, the decision does read that "as a result of repeated work activities the Claimant suffers from bicep tendonitis and loss of range of motion of the right shoulder," and then goes on to award a 5 percent permanent partial general body disability. Accordingly, it does appear that the Administrative Law Judge gave greater weight to the diagnosis and rating opinions given by Dr. Brown. This conclusion is further evidenced by the fact that Edward J. Prostic, M.D., found evidence of chronic cervical sprain and strain in addition to rotator cuff tendonitis. Grace L. Stringfellow, M.D., also found claimant had abnormalities to the cervical spine to which she attributed the abnormal range of motion in claimant's right and left upper extremities. Don B. W. Miskew, M.D., noted that what was initially only a right shoulder problem had become a bilateral shoulder and neck problem. However, he also noted that claimant showed signs of symptom magnification and that claimant was not fully cooperative with the functional capacities evaluation which rendered that test invalid. Nevertheless, Dr. Miskew considered claimant's symptomatology and his findings upon physical examination to be more compatible with a cervical strain or underlying cervical disc problem rather than with a bilateral shoulder problem. He further opined that claimant could have an underlying inflammatory arthritis which could be the cause of all her problems. Apparently, due to his inability to make a specific diagnosis, Dr. Miskew was unable to assign any specific percentage of impairment to claimant's work.

Based upon the history of claimant's symptoms and complaints, the Appeals Board agrees with the finding by the Administrative Law Judge that more probably than not claimant's right shoulder and bicep tendonitis is the result of her work activities. However, the greater weight of the credible medical testimony does not persuade this trier of fact that claimant's other complaints, including those pertaining to her neck and left shoulder areas, are the result of her work activities. Therefore, the 5 percent permanent partial general body disability award is both reasonable and appropriate and should be affirmed.

(4) Claimant alleges the Administrative Law Judge erred by failing to make provisions for future medical treatment. It is true that Dr. Brown found that claimant was not

in need of further medical treatment. Also, the award does not specifically provide for future medical treatment at the expense of respondent and its insurance carrier. However, the Brief of respondent and its insurance carrier to the Appeals Board states:

“The Respondent and Insurance Carrier did not read ALJ Johnson’s Award as denying the Claimant future medical benefits upon proper application and approval of the Director of the Division of Workers’ Compensation and respectfully submit that absent either a negative finding, an Award against future medical, or redemption of liability pursuant to K.S.A. 44-531, the Claimant is statutorily entitled to future medical upon proper application and approval by the Director of the Division of Workers’ Compensation.”

Accordingly, the Appeals Board finds that an award of future medical treatment upon proper application to and approval by the Director should be deemed as implicit within the Decision by the Administrative Law Judge and is hereby granted.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Decision entered by Administrative Law Judge Kenneth S. Johnson, dated January 28, 1997, should be and is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS  
Kerry McQueen, Liberal, KS  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director